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1862a

DECISIONS

SUPERINTENDENT OF COMMON SCHOOLS.

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Communication from the Secretary of the Commonwealth, transmitting the Decisions made by him as Superintendent of Common Schools.

SCHOOL DEPARTMENT, SECRETARY'S OFFICE, }
Harrisburg, April 6, 1852.

Hon. JOHN H. WALKER,
Speaker of the Senate :

SIR:—In obedience to the resolution of the Senate of the 1st inst., I have the honor, herewith, to enclose the decisions made by myself as Superintendent of Common Schools. The decisions, as here furnished, are in the order in which they have been respectively made.

I have the honor to be,
Your obedient servant,
F. W. HUGHES,
Superintendent, &c.

DECISIONS.

Sub-districts cannot be required to pay for the erection, purchase, or rent of school houses out of their share of school funds. That is in all cases the duty of the directors, who pay such expense out of the general school fund of the district. If sub-districts were required to erect, purchase, or rent school houses, the whole amount of their funds might be consumed in that manner, and they would then be unable to keep their schools open "not less than three months," as is required by law; for they have no power to raise money, but must depend entirely upon the amount given them by the board of directors to keep their schools open for the term specified.

The board of directors must appropriate a sufficient sum of money to each sub-district, to keep its schools in operation "not less than three months" in each school year.

The board of school directors can only "control" committees of sub-districts, so far as to prevent them from exercising powers not expressly granted to them.

The school directors of every district are required by law, to keep all the schools of their district in operation at least three months in each school year (including the schools of sub-districts), so as to give every scholar the opportunity to obtain three months schooling per year; and if they abuse their trust in this regard, they may be prosecuted by indictment for misdemeanor.

Directors have a right to make such distribution of the school funds between sub-districts as to them shall seem just and proper, appropriating sufficient to each to keep its schools in operation at least three months.

In order to create a third sub-district out of parts of two other sub-districts, it is necessary that a majority of the citizens of each of the two sub-districts give their assent to the proposed alteration of their lines.

The certificate of school teachers must be renewed annually, and as no certificate can be given, except upon actual examination, it follows that all teachers must be examined annually. The changes in the directorship of the public schools, as well as

the propriety of improvements and frequent tests of capacity, will suggest reasons for these repeated examinations.

Newly elected directors are held to be in office as soon as they receive their certificates of election, or claim their seats at a meeting of the board with proper evidence of their election. The directors supplanted, have no authority to act after their successors are elected.

There never is a *new* board of directors where the law takes its regular course, except when new districts are formed. Debts legally contracted by a board of directors in any year, and left unpaid, must be liquidated by the board in succeeding years.

Directors may, in their discretion, require the schools of their districts to be kept open every day of each calendar month, except Sundays. The most general rule is, to keep them open twenty-six days per month, but some districts limit the school month to twenty-four days. A less number than twenty-four days would not be sanctioned by the Department. Above that number, the length of time to be taught within a calendar month, is at the discretion of the directors.

The *occupation* of a farmer is not taxable for school purposes.

The correct mode of levying school taxes is, first, to "assess upon all offices and posts of profit, professions, trades, and occupations," except the occupation of farmers, "and upon all single freemen above the age of twenty-one years, who do not follow any occupation, any sum which the school directors shall deem proper and sufficient, not exceeding the amount assessed on the same for State and county purposes, except that the sum assessed on each, shall in no case be less than fifty cents." After having done this, the directors should ascertain how much additional tax it is necessary to raise to meet all the proper and legal demands of the current school year, and assess that amount upon the *property* of the district, without regard to whether the *owner* of such property had been before taxed for any office or post of profit, profession, trade or occupation, or as a single freeman.

Whatever money is due from tax collectors of preceding years, can be collected from them by the directors, by bringing suit upon the collectors' bonds; or if they have given none, by an ordinary action of debt. Directors are instructed by the Department to collect old duplicates promptly.

It is the specific duty of constables to receive the school duplicate from the treasurer, and it is also their duty to give bond, &c. The oath of office of every constable enjoins upon him to perform all duties required of him by law. If in violation of his duty and oath of office, he refuses to receive the duplicate, and give the required bond, the treasurer may appoint some other person to collect the unpaid school tax. And here express provision on the subject ends. The failure of the constable to give the security required, and the refusal of all others to accept the collection of the unpaid school tax, is certainly a case not contemplated. The district treasurer cannot collect by levy and sale such taxes himself, but in his selection of another to collect the same, he is not confined to the inhabitants of the district, and may select one out of it.

The "three hundred dollar act" does not exempt property from levy and sale for taxes.

School directors may establish German schools under the common school law, or cause German and English to be taught in the same school, but the board of directors cannot be required to cause German to be taught. They should consult the wishes of the people of their district in this regard, and if any considerable number of Germans desire to have their children instructed in their own language, their wishes should be gratified. The directors have exclusive jurisdiction over this subject, and from their decision upon it there is no appeal—the Superintendent having only the power to *advise*. If the voice of the people is not respected by them, the only remedy is to elect persons who will respect it.

All acts, or parts of acts, relative to common schools, passed previous to April 7, 1849, which are inconsistent with, or are supplied by the act of that date, are repealed. Some acts previous to that date reduced the number of directors, in certain districts, to three. All those and similar acts are repealed, and every district must elect six directors in the manner provided by law.

A tax levied by the votes of less than four directors is illegal, and collection cannot be enforced.

In cases where the constable refuses to receive the duplicate from the treasurer, the latter may appoint some other person to collect it, who may or may not be a resident of the district, and he should require security from the person so appointed, but he is not compelled by law to do so. If he does not take security, he is personally responsible for any loss that may be sustained.

Collectors must pay over the tax collected by them to the person who is treasurer at the time payment is made.

The treasurer is required to pay all orders upon him which are regularly drawn and signed by the president and secretary of the school board, if sufficient funds are in his hands. He has no right to go behind the order to inquire whether it was drawn for a legal purpose.

If the president and secretary draw an order without the authority of the board, they are guilty of a misdemeanor; and if the board direct an order to be drawn for any other than a legitimate purpose, they subject themselves to indictment.

At the annual settlement, or soon thereafter, the treasurer must pay over the balance of school money in his hands to his successor in office.

It is a misdemeanor in office for a collector to purchase warrants with the school funds, for which he is indictable. The board of directors can compel him to pay the tax collected by him in the same funds (or in legal currency) he collects, and no other course will meet the approbation of the Department.

School directors have the abstract right to compel scholars to go to either of the schools within the district of their residence, if they go at all, but this right or power should not be arbitrarily exercised. Where a scholar can be more conveniently accommodated in an adjoining district, the directors should make such arrangement as is provided for in section eleven of the school law, and this holds good as to sub-districts, though in the latter case the directors are not *required* to make the arrangement designated by the law, but they *should* do so.

There is not, and cannot be, a *general, unalterable rule* laid down in regard to the distribution of school funds among sub-districts. The directors are required by law to pay for the erection, purchase, or renting of the necessary number of school houses for their entire district, and for "all necessary expenses of fuel and repairs," out of the general fund of the district (and this duty is not in any manner changed or avoided by the formation of *sub-districts*), and they are also required by law to appropriate a sufficient sum of money to each sub-district to keep all its schools (such number as is necessary to accommodate all the scholars) in operation "not less than three months" in each school year. After having made proper provision for doing these things, the distribution of the balance of the funds in their possession is left entirely to the discretion, judgment, and integrity of the directors. It is certainly their plain duty to make the distribution in a manner that is just to all the sub-districts, showing special favor to none, but they are the judges of what is just and proper. For any mal-appropriations of school funds, they are indictable, but the Department has no power to punish them.

The directors of some districts appropriate a *pro rata* share, according to the number of scholars, to each sub-district. This plan of distribution may be a very good one in many instances, if the requirements of the law before-mentioned are first fulfilled, but will not answer as a general rule. A sub-district of thirty scholars may require a teacher of superior attainments, one whose services cannot be obtained for less than (say) thirty dollars per month, while another having fifty scholars might be as well cared for and its school as efficiently taught for (say) twenty dollars per month, depending upon the attainments of the scholars. The *wants* of sub-districts must be considered in the distribution of the school funds, and not merely the number of scholars.

It is manifestly wrong for the school directors to appropriate a sufficient amount of money to one sub-district to keep its schools in operation six, eight, or ten months, while to another a sum barely sufficient to keep its schools open three months is ap-

appropriated. Money can only be rightfully appropriated by the directors with the view to keep the schools of their district, and of the sub-districts within its bounds, in operation as near as may be an equal length of time.

The amount of taxes paid by any neighborhood, or sub-district, should not be permitted to influence the amount of school funds appropriated to each school or sub-district to the least possible extent. A sub-district containing only twenty scholars may pay a tax of fifty dollars, while another having one hundred scholars may pay only the same amount. The first would require only one school, and the second at least two. If the scholars were of equal grade it would cost (say) twenty dollars per month to teach the school of the first, and forty dollars per month to teach those of the second. Under these circumstances, the directors should appropriate twenty dollars per month to the former, and forty dollars to the latter.

While such circumstances exist there can be no general rule to regulate the distribution of school funds to sub-districts, and such distribution can only be properly made by the directors by complying first with the requirements of the law and then distributing the balance of the funds in such manner as to do no positive injustice to any.

A committee elected in a sub-district at any other time than that authorized by law, have no authority to act—no more than if they had never been elected. If there is no legally elected committee in a sub-district, their powers and duties revert to the board of directors.

If the school directors do not keep all the necessary schools of their district in operation at least three months in each school year, they are indictable for misdemeanor in office.

Public meetings have no power to discharge school teachers, nor to employ them, except in case of difference between the directors and committee of a sub-district. Directors must perform the duties required of them by law, but in performing them, should, as far as practicable, consult the wishes of the people of their district. The latter, however, cannot control the action of the former against their consent.

School directors have the power at any time to dismiss a teacher "for incompetency, cruelty, negligence, or immorality," and should be prompt in the exercise of this power whenever either of these charges are established against a teacher.

The superintendent has no power to compel directors to discharge a teacher, but the latter are always liable to indictment for misdemeanor for neglecting or refusing to comply with the requisitions of the law.

The directors are not personally liable for the salary of a teacher legally employed. When townships are divided, that part in which the school buildings are located becomes the owner for the purposes designed in their construction.

All "subjects or things made taxable for state and county purposes" are taxable for school purposes. Money at interest is therefore taxable for school purposes.

The board of directors have the exclusive right to locate school houses. It is their duty, however, to locate them at such point as will best accommodate the scholars for whose benefit they are erected.

A scholar cannot be suspended or expelled from school unless "found guilty, on full examination and hearing, of refractory and incorrigibly bad conduct" in school.

Neither school directors nor school teachers can compel scholars to chop wood for the school house.

School directors have power only to assess an annual tax, which must be done on or before the first Monday of May—i. e., between the time of the organization of the board, after the annual election of directors, and the first Monday of May ensuing. After this tax has been levied no other tax can be assessed by the directors for the same year.

A committee of a sub-district elected at any other time than that fixed by the school law, is illegal, and their election is void.

Four directors constitute a quorum, and the acts of a majority of these are as legal and binding as though all six were present and voted on the same side or signed the paper, except that the annual school tax must be levied by the votes of not less than four members of the board.

If a teacher receives scholars knowing that they have been ordered to another school by the directors, he is guilty of an act of insubordination—he “neglects” his duty in refusing to carry out the requirements of the board—for which the directors can discharge him.

A verbal discharge of a teacher by a director, authorized by the board, is sufficient, but it is recommended in all cases to notify the teacher of his discharge in writing.

School directors are not required to be sworn upon entering upon the duties of the office.

The law does not authorize the board of directors to compensate the secretary for his services out of the school fund.

If a director duly elected secretary refuses to serve in that capacity, he “neglects to act in his official capacity,” and his seat as a director may be declared vacant by the other members of the board, and such vacancy may be filled as provided in section seventh of the school law.

There is no other limitation upon the gross amount of tax that may be assessed by school directors than is contained in section thirteenth, page tenth, of the pamphlet copy of the school law.

Tax-payers have no control over the amount of tax to be assessed by the board of directors, unless the same exceeds what would be necessary to keep open the schools for ten months in the year, but the wishes of a majority of them in this respect should not be disregarded.

The school law of 1849, repealed all former acts in reference to a general system of common schools. All sub-districts, therefore, created under former laws, ceased to exist upon the adoption of the act of 1849, and the seventeenth section of the latter act refers only to sub-districts established since its adoption.

The superintendent is of the opinion that the spirit of the act of 1849 authorizes school directors to sell school houses, with the view to build new ones, but as there appears to be a reasonable doubt whether such authority is conferred by that act, he suggests that in all cases where such sale is desirable direct authority be obtained from the Legislature by special enactment.

If the school directors neglect to organize within twenty days after the election, as specified by law, they may do so at a future time, and such organization will be strictly legal, if no steps were taken in the meantime to remove the directors elect from office by due course of law.

A guardian resident of this State, whose ward resides out of the State, is not thereby exonerated from the payment of school tax upon any property which he holds in trust for the benefit of such ward. The law is as binding upon him as though the ward was resident within this State.

Directors can only assess school tax upon the subjects and things returned to them by the county commissioners. After the duplicate passes out of their hands into those of the treasurer, their power over it is limited to the correction of manifest errors and making exonerations. They cannot in any case receive a return from the assessor, and levy a tax upon the property thus returned.

School directors are not entitled to compensation for any service they may render as such.

The president of a board of school directors has no right to draw an order upon the treasurer, unless he is directed to do so by resolution of the board. If the secretary refuses to sign an order legally drawn by the president, the board may appoint a secretary *pro tem.* to do it, and may also remove the secretary from the office of director, for refusing to act in his official capacity.

It is the duty of the directors to examine every teacher, or cause him to be examined by a competent person, before employing him; and it is a clear violation of the law for them to employ a teacher who has not been duly examined and approved. For such misdemeanors directors render themselves liable to prosecution.

The directors of every district, to entitle it to its share of the State appropriation, must report to the superintendent that all its necessary schools have been kept in operation not less than three months during the school year preceding that for which

the warrant is drawn, or give a satisfactory explanation why the same has not been done.

It has been frequently decided that school directors had no authority to levy a tax specially for building school houses. They may, however, levy a tax sufficient to keep all their schools in operation ten months—cause them to be taught only three months—and apply the balance to the erection or purchase of school houses.

The only limitation upon the amount of tax that directors may assess, is that it shall be sufficient to keep all the necessary schools of the district in operation not less than three nor more than ten months in each school year.

“A vote of the citizens” can neither authorize nor prevent the directors from levying a specified amount of tax—the school law regulates them in that regard.

An idea prevails in some localities that the provision of the old law, authorizing the voters of each district to decide by an election whether the common school system shall be continued, is still in force. This is an error. The law of 1849 establishes the system permanently in every district in the State.

Treasurers and collectors can receive per centage only upon the taxes actually collected by them.

Division 6th of the 16th section of the school law confers the power upon school directors to determine “what books shall be used in schools.” There is no provision made for an appeal from their decision in this regard, and they, therefore, seem to have exclusive power over this subject. They cannot of course require books to be used which are of an immoral character, for that would injuriously affect the public interest, and all books of an admitted sectarian bearing should be excluded from the public schools, because the schools *are* public, and it is therefore improper that books should be imposed upon them which would preclude the attendance of any scholar. The Superintendent advises that directors cause such books to be used in the schools as will not be liable to the objection of inculcating sectarian doctrines, or are in any manner offensive to the religious opinions of any class of citizens, as books inculcating and consistent with pure morals, and yet avoiding sectarian tendencies, may be readily procured.

The 4th division of the 16th section of the school law requires each board of directors to examine every teacher who may apply for employment as such, and to award a certificate if the applicant be found properly qualified.

The directors cannot be compelled to establish a sub-district.

Committees of sub-districts have no authority, except that expressly granted to them.

Directors have the exclusive power to locate school houses, but in exercising this power it is their duty to pay due regard to the wishes and interests of the people interested.

Where costs are imposed by the Court upon a board of school directors, in a civil action against them in their official capacity, such costs may be paid out of the school fund of the district, and cannot, except in case of wilful neglect of duty, be collected from the directors personally. But when directors are prosecuted for misdemeanor, and the costs are imposed upon them, they must pay the same out of their own, and not out of the school funds.

Any necessary expenses of a civil action, not imposed by the Court upon other parties, such as attorney fees, may be paid by the directors out of the school fund.

When a vacancy is to be filled in a school board by election, the persons having the highest number of votes for directors are legally elected, without reference to whether the tickets designated one of those voted for to fill the vacancy.

School directors have no authority to appropriate any portion of the school funds to Sunday schools, nor to cause the common schools to be taught on Sunday.

If the directors illegally appropriate the school funds to unauthorized objects, they can be compelled by law to refund the money.

The school treasurer is required to pay all orders drawn upon him in proper form, by the president of the board of directors and attested by the secretary. He has no discretionary power, but must pay the order when presented, if he has funds. The

auditors, in settling with him, cannot refuse to receive these orders as vouchers, even if drawn for an illegal purpose.

The duty of directors to levy the annual school tax on or before the first Monday of May, is merely directory. If they neglect, or for any other cause do not levy the tax within the time specified, they may levy it at a future period; and a tax thus levied, is as valid as if the letter of the law had been strictly fulfilled.

To procure the twenty-five per cent. allowed to non-accepting districts by the act of 1848, it is necessary for the district claiming the same to make proof of a satisfactory character to the county treasurer, that it is embraced in and has complied with the provisions of said act, and then it becomes the duty of that officer to deduct the percentage from the amount paid in by such district for State purposes, and pay over the same to the district collector, whose receipt therefor would be received as a proper voucher on settlement of his account with the State Treasurer. The act of 1848 embraced the school years 1848 and 1849. By the appropriation bill of 1849, it was extended to the first of June, 1850; by the act of 1850, to the first of June, 1851; and by the act of 1851, to the first of June, 1852.

The clause in reference to the discharge of a teacher, in the blank agreement between directors and teachers, printed in the pamphlet copy of the school law, is intended merely to enable the directors to terminate the agreement at the end of a month, or quarter, and does not, in any manner, qualify their power and duty to discharge a teacher *at any time* for incompetency, cruelty, negligence, or immorality.

Farming is not a taxable occupation, therefore, single freemen who are farmers are subject to the minimum tax of fifty cents.

All real estate and other property is taxed separately from and in addition to offices and posts of profit, professions, trades and occupations, or single freemen without occupation.

If a board of directors fail to organize, because no one of them can obtain a majority of votes for president, it is such neglect of duty as will justify the Court of Quarter Sessions, upon the complaint of six taxable citizens of the district, and upon due proof thereof, to declare their seats vacant, and appoint others in their stead.

When two directors are to be elected, and three persons have an equal number of votes, there is no election, and such vacancies therefore exist as authorizes the board to fill them by appointment until the next election.

If any citizens establish a school without the authority of the directors, and if such school is not directly approved of by a majority of the board of directors acting in their official capacity, the former cannot compel the district to pay the expenses of such school.

The Superintendent has frequently decided that a committee elected in a district at any other time than that authorized by the school law, is illegal, and has no authority to act. If persons thus elected do act, their action is illegal, and not binding on the sub-district, the directors, or other individuals; but the directors may afterwards approve their action, in which case it is as binding upon the parties in interest, as though the committee had been legally constituted.

The act of Assembly prohibiting candidates for certain offices from serving as officers of the election, does not apply to school directors.

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